

R E M A R K S

Careful review and examination of the subject application are noted and appreciated.

CLAIM REJECTIONS UNDER 35 U.S.C. §102

The rejection of claims 1-25 under 35 U.S.C. §102(e) as being anticipated by Williams et al. (U.S. Patent No. 6,407,641, hereinafter Williams) is respectfully traversed and should be withdrawn.

Attached (as Exhibit A) is a Declaration of Timothy J. Williams pursuant to 37 CFR §1.132 providing evidence that Williams is not an invention made by another, and therefore is not available as prior art under 35 U.S.C. §102(e). Specifically, the Applicant is one of the named inventors of Williams (see paragraph 7 of the Declaration of Timothy J. Williams dated January 12, 2005). The subject matter disclosed but not claimed in Williams and relied upon in the rejection was conceived by the Applicant (see paragraph 8 of the Declaration of Timothy J. Williams dated January 12, 2005). Since the subject matter disclosed but not claimed in Williams and relied upon in the rejection was conceived by the Applicant, the material relied upon in the rejection does not constitute an invention by another (see MPEP §§715.01(a), 716.10 and 2136.05). Therefore, because the Applicant's own work may not be used against him or her unless there is a time bar under 35

U.S.C. §102(b),¹ Williams is not available as a prior art reference under 35 U.S.C. §102(e).

In this case there is no time bar. Specifically, the Application has a filing date of September 22, 2000. Williams has a filing date of February 23, 2000. Therefore, there is no time bar under 35 U.S.C. §102(b). As such, the presently claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

SUMMARY OF TELEPHONE INTERVIEWS

In a telephone interview, on January 10, 2005, between Examiner Cao and Applicant's representative, Robert Miller, it was agreed that the Examiner's Supervisor, Thomas Lee, should be consulted regarding the refusal by Examiner Cao to enter the Declaration of Timothy J. Williams filed December 8, 2004. In a telephone interview, on January 11, 2005, between Examiner Lee and Applicant's representative, Robert Miller, it was agreed that the Declaration of Timothy J. Williams filed December 8, 2004 should be entered and considered based on MPEP §716.01(A)(3) because the declaration was filed with a first reply after final rejection for the purpose of overcoming a new ground of rejection (See MPEP §716.01(A)(3) and lines 1-4 in section no. 9 of the Office Action dated October 13, 2004).

¹ See MPEP §2136.05.

Examiner Lee further stated that, based on MPEP §§ 715.01(a) and 715.01(c), paragraph no. 8 of the Declaration Timothy J. Williams needed to be changed to state either (i) the subject matter was conceived by the Applicant or (ii) the subject matter was derived from Applicant's own work, in which case, further evidence would need to be submitted. Agreement was reached that (i) a supplemental Advisory Action would be mailed, (ii) Applicant would submit a new declaration conforming in form with the suggestion made by Examiner Lee, (iii) the new declaration would be entered, and (iv) either a new Office Action or a Notice of Allowance would be issued.

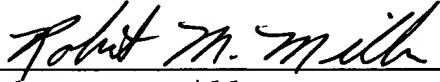
Accordingly, the present application is in condition for allowance. Early and favorable action by the Examiner is respectfully solicited.

The Examiner is respectfully invited to call the Applicant's representative should it be deemed beneficial to further advance prosecution of the application.

If any additional fees are due, please charge our office
Account No. 50-0541.

Respectfully submitted,

CHRISTOPHER P. MAIORANA, P.C.

A handwritten signature in cursive script, reading "Robert M. Miller", is written over a horizontal line.

Robert M. Miller
Registration No. 42,892
24840 Harper Avenue, Suite 100
St. Clair Shores, MI 48080
(586) 498-0670

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